

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MIKEQUALE MILLER, *et al.*,

Plaintiffs,

vs.

**Case No.: 2:19-cv-2083
JUDGE GEORGE C. SMITH
Magistrate Judge Vascura**

PEP BOYS – MANNY, MOE & JACK, *et al.*,

Defendants.

ORDER

On May 23, 2019, the United States Magistrate Judge issued an *Order and Report and Recommendation* recommending that Plaintiff Mikequale Miller's Motion for Leave to Proceed *In Forma Pauperis* be granted and that Plaintiffs' Complaint be dismissed for failure to state a claim upon which relief can be granted pursuant to 28 U.S.C. §1915(e)(2)(B)(ii). (*See Order and Report and Recommendation*, Doc. 3). The parties were advised of their right to object to the *Order and Report and Recommendation*. Plaintiffs filed Objections (Doc. 4), however those were stricken for failure to comply with Federal Rule of Civil Procedure 11. (Doc. 5). This matter is now before the Court on Plaintiff Mikequale Miller's newly filed Objections to the *Order and Report and Recommendation*. (Doc. 6). The Court will consider the matter *de novo*. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

Plaintiff, Mikequale Miller, and eleven other family members initiated this lawsuit. In this Court's June 5, 2019 Order, Plaintiffs were instructed that they must plead and conduct their own case personally or through counsel. In the new objection, only Plaintiff Mikequale Miller

has signed the pleading. Therefore, with no objections being filed on behalf of all the other family members, the Court adopts the *Order and Report and Recommendation* as to them. All of the other family members' claims, with the exception of Plaintiff Mikequalue Miller, are hereby dismissed because they are barred by the applicable statute of limitations.

Turning to the claims of Plaintiff Mikequalue Miller, the Court agrees with Plaintiff's arguments that since Plaintiff was a minor when the incident occurred in 2007, the statute of limitations does not bar his claims. Pursuant to Ohio Revised Code § 2305.16, the statute of limitations was tolled until Plaintiff turned 18. Therefore, Plaintiff Mikequalue Miller may proceed with his claims.

In conclusion, Plaintiff Mikequalue Miller's objection to the *Order and Report and Recommendation* is hereby **SUSTAINED**. However, to the extent the objections are construed against any of the other named Plaintiffs, those objections are without merit and hereby **OVERRULED**. Therefore, the *Order and Report and Recommendation*, Document 8, is hereby **ADOPTED** and **AFFIRMED in part as to all Plaintiffs but Mikequalue Miller, but REVERSED as to Mikequalue Miller's claims.**

The Clerk shall remove Documents 3 and 6 from the Court's pending motions list.

IT IS SO ORDERED.

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT